

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

VOTER REFERENCE FOUNDATION,)
LLC,)
)
Plaintiff,)
v.)
) **CASE NO: 1:22-cv-00222-JB-KK**
)
RAÚL TORREZ, in his official)
capacity as New Mexico Attorney General,)
)
and)
)
MAGGIE TOLOUSE OLIVER, in her)
Official capacity as New Mexico)
Secretary of State,)
)
Defendants.)

**PLAINTIFF VOTER REFRENCE FOUNDATION, LLC'S
MOTION FOR LEAVE TO FILE SECOND SUPPLEMENTAL BRIEF ON THE
PARTIES' CROSS-MOTIONS FOR SUMMARY JUDGMENT**

COMES NOW Plaintiff Voter Reference Foundation, LLC ("VRF") and moves the Court for leave to file a second supplemental brief on the Parties' pending cross-motions for summary judgment. Since the hearing and first round of supplemental briefing on the cross-motions for summary judgment, two key actions taken by Defendants warrant additional briefing. The material facts regarding these recent events, which are memorialized in written correspondence between the parties, are not in dispute.

First, the Secretary of State produced some voter data to VRF in response to VRF's Inspection of Public Records Act ("IPRA") request which VRF made the day after the Court's June 14, 2023 hearing on the cross-motions. That request purposely used the same language as the

NVRA's Public Inspection Provision, asking the Secretary for "all records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters." VRF did not submit an affidavit and made no promises regarding how the response to the IPRA request would be used, nor did the Secretary demand such promises. Nevertheless, on August 22, 2023, the Secretary produced, among other things, individualized, identifiable voter data. This contradicted or undermined various positions Defendants maintain in this lawsuit, including: (1) that the Secretary will not provide voter data absent a signed affidavit; (2) that the "records" described in the NVRA's Public Inspection Provision do not include individualized voter data; and (3) that providing voter data to VRF would be tantamount to participation in a criminal conspiracy.

Second, Defendants' counsel wrote to VRF on August 30, 2023, offering to produce to VRF the data it requested on May 27, 2022, claiming that some unidentified statement by Plaintiff's counsel at the June 14, 2023 hearing constituted a change of Plaintiff's VRF's position, causing Defendants to have a change of heart about providing the data to VRF.

Additional briefing will address the primary question the Court pondered after the June hearing: what exactly would the Secretary produce pursuant to the NVRA's Public Inspection Provision under the Defendants' interpretation of that provision? Defendants' supplemental briefing (ECF No. 133) provided little clarity on that question. But Defendants' actions since the Court's admonishment that their continued refusal to produce voter data to VRF suggested viewpoint discrimination provide the context that will aid the Court in resolving the NVRA claim—and other claims—in Plaintiff's favor.

VRF respectfully requests that the Court grant it leave to file a second supplemental brief on the parties' cross-motions for summary judgment. A copy of the proposed brief and supporting materials are filed contemporaneously with this motion.

Dated: September 25, 2023

Respectfully submitted,
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CERTIFICATE OF SERVICE

I, Edward D. Greim, certify that on September 25, 2023, a copy of foregoing was filed with the Clerk of the Court using the CM/ECF system, which sent notification to the following via email:

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